

SECOND REGULAR SESSION

# SENATE BILL NO. 867

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Read 1st time February 13, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

5778S.03I

## AN ACT

To repeal sections 407.826 and 407.828, RSMo, and to enact in lieu thereof two new sections relating to motor vehicle franchise practices.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 407.826 and 407.828, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 407.826 and 407.828, to  
3 read as follows:

407.826. 1. (1) A franchisor shall be prohibited from owning or operating  
2 a new motor vehicle dealership in this state. It is not a violation of this section  
3 for a franchisor to own or operate a new motor vehicle dealership:

4 (a) For a temporary period of not more than twenty-four months if the  
5 dealership is for sale at a reasonable price and on reasonable terms and  
6 conditions to an independent qualified buyer. On showing by a franchisor of good  
7 cause, the time limit set forth above may be extended for an additional period of  
8 up to twelve months; or

9 (b) In a bona fide relationship with an independent person (i) who is  
10 required to make a significant investment in the new motor vehicle dealership  
11 subject to loss and (ii) operates the dealership and can reasonably expect to  
12 acquire full ownership of the dealership within a reasonable time and under  
13 reasonable terms and conditions.

14 (2) Nothing in this section shall be deemed to prohibit a franchisor from  
15 owning a minority interest in an entity that owns motor vehicle dealerships of the  
16 same line-make manufactured and franchised by the factory, provided that all of  
17 the following conditions are met at the time of acquisition and continue to be met  
18 during the time the entity maintains ownership:

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 (a) The interest owned by the factory in said entity shall not exceed  
20 forty-five percent of the total ownership;

21 (b) Any dealership in which the entity owns an interest shall be **located**  
22 no less than [nine miles of] **the distances set forth in section 407.817 from**  
23 any unaffiliated new motor vehicle dealership trading in the same line-make of  
24 vehicle;

25 (c) All of the licensed dealerships for the sale of such factory's new motor  
26 vehicle in the state trade exclusively in the factory's line-make;

27 (d) During any period in which the entity has such ownership interest, the  
28 factory shall have no more than four franchise agreements governing such  
29 line-make with dealers licensed to do business in this state;

30 (e) All the factory's franchise agreements confer rights on the franchisee  
31 of the line-make to develop and operate, within a defined geographic territory or  
32 area, as many dealership facilities as the franchisee and factory shall agree are  
33 appropriate;

34 (f) At the time the entity first acquires an ownership interest, not fewer  
35 than seventy-five percent of the franchisees of the line-make within this state  
36 own and operate two or more dealership facilities in the geographic territory or  
37 area covered by the franchise agreement with the factory;

38 (g) As of January 1, 2001, there were no more than ten dealerships of  
39 such line-make licensed as a new motor vehicle dealer in this state; and

40 (h) Prior to August 28, 2001, the factory has been continuously engaged,  
41 at least since July 1, 1998, in the retail sale of motor vehicles of its own  
42 line-make through direct or indirect ownership of dealerships in at least five  
43 states.

44 2. A franchisor shall not sell new motor vehicles directly to any retail  
45 consumer except through a franchisee for the line-make that includes the new  
46 motor vehicle unless such consumer is an employee of the franchisor, or is a  
47 not-for-profit organization or an agency of the federal, state or local  
48 governments. This subsection shall not preclude a franchisor from providing  
49 information to consumers for the purpose of marketing or facilitating the sale of  
50 a new motor vehicle or from establishing programs to sell or offer to sell new  
51 motor vehicles through participating franchisees.

52 3. The remedies and relief available pursuant to section 407.835 shall  
53 apply to this section.

407.828. 1. Notwithstanding any provision in a franchise to the contrary,

2 each franchisor shall specify in writing to each of its franchisees in this state the  
3 franchisee's obligations for preparation, delivery, and warranty service on its  
4 products. The franchisor shall fairly and reasonably compensate the franchisee  
5 for preparation, delivery, and warranty service required of the franchisee by the  
6 franchisor. The franchisor shall provide the franchisee with the schedule of  
7 compensation to be paid to the franchisee for parts, labor, and service, and the  
8 time allowance for the performance of the labor and service for the franchisee's  
9 obligations for preparation, delivery, and warranty service.

10         2. The schedule of compensation shall include reasonable compensation  
11 for diagnostic work, as well as repair service and labor for the franchisee to meet  
12 its obligations for preparation, delivery, and warranty service. The schedule shall  
13 also include reasonable and adequate time allowances for the diagnosis and  
14 performance of preparation, delivery, and warranty service to be performed in a  
15 careful and professional manner. In the determination of what constitutes  
16 reasonable compensation for labor and service pursuant to this section, the  
17 principal factor to be given consideration shall be the prevailing wage rates being  
18 charged for similar labor and service by franchisees in the market in which the  
19 franchisee is doing business, and in no event shall the compensation of a  
20 franchisee for labor and service be less than the rates charged by the franchisee  
21 for similar labor and service to retail customers for nonwarranty labor and  
22 service, provided that such rates are reasonable. The primary factor in  
23 determining a fair and reasonable compensation for parts under this section shall  
24 be the prevailing amount charged for similar parts by other same line-make  
25 franchisees in the market in which the franchisee is doing business and the fair  
26 and reasonable compensation for parts shall not be less than the amount charged  
27 by the franchisee for similar parts to retail customers for nonwarranty parts,  
28 provided that such rates are reasonable. If another same line-make franchisee  
29 is not available within the market, then the prevailing amount charged for  
30 similar parts by other franchisees in the market shall be used as the primary  
31 factor. **For trucks with a licensed gross weight of eighteen thousand**  
32 **pounds or more, reasonable compensation for parts shall be equal to**  
33 **the dealer's cost for the parts multiplied by the dealer's average**  
34 **percentage markup over dealer cost for parts. For this determination,**  
35 **a "dealer's average percentage markup over dealer cost for parts" is**  
36 **calculated by dividing total charges for parts in the dealer's qualifying**  
37 **nonwarranty repair orders by the total dealer cost for the parts. A**

38 **dealer's "qualifying nonwarranty repair orders" means an order relating**  
39 **to a nonwarranty repair that would be warranty work if the vehicle**  
40 **repaired was covered by the franchisor's warranty. A "qualifying**  
41 **nonwarranty repair order" does not include routine maintenance such**  
42 **as oil changes or replacement of fluids, belts, nuts, bolts, fasteners,**  
43 **bulbs, batteries, or tires.**

44 3. A franchisor shall perform all warranty obligations, including recall  
45 notices; include in written notices of franchisor recalls to new motor vehicle  
46 owners and franchisees the expected date by which necessary parts and  
47 equipment will be available to franchisees for the correction of the defects; and  
48 reasonably compensate any of the franchisees in this state for repairs required  
49 by the recall. Reasonable compensation for parts, labor, and service shall be  
50 determined under subsection 2 of this section.

51 4. No franchisor shall require a franchisee to submit a claim authorized  
52 under this section sooner than thirty days after the franchisee completes the  
53 preparation, delivery, or warranty service authorizing the claim for preparation,  
54 delivery, or warranty service. All claims made by a franchisee under this section  
55 shall be paid within thirty days after their approval. All claims shall be either  
56 approved or disapproved by the franchisor within thirty days after their receipt  
57 on a proper form generally used by the franchisor and containing the usually  
58 required information therein. Any claims not specifically disapproved in writing  
59 within thirty days after the receipt of the form shall be considered to be approved  
60 and payment shall be made within fifteen days thereafter. A franchisee shall not  
61 be required to maintain defective parts for more than thirty days after submission  
62 of a claim.

63 5. A franchisor shall compensate the franchisee for franchisor-sponsored  
64 sales or service promotion events, including but not limited to, rebates, programs,  
65 or activities in accordance with established written guidelines for such events,  
66 programs, or activities, which guidelines shall be provided to each franchisee.

67 6. No franchisor shall require a franchisee to submit a claim authorized  
68 under subsection 5 of this section sooner than thirty days after the franchisee  
69 becomes eligible to submit the claim. All claims made by a franchisee pursuant  
70 to subsection 5 of this section for promotion events, including but not limited to  
71 rebates, programs, or activities shall be paid within ten days after their approval.  
72 All claims shall be either approved or disapproved by the franchisor within thirty  
73 days after their receipt on a proper form generally used by the franchisor and

74 containing the usually required information therein. Any claim not specifically  
75 disapproved in writing within thirty days after the receipt of this form shall be  
76 considered to be approved and payment shall be made within ten days.

77 7. In calculating the retail rate customarily charged by the franchisee for  
78 parts, service, and labor, the following work shall not be included in the  
79 calculation:

80 (1) Repairs for franchisor, manufacturer, or distributor special events,  
81 specials, or promotional discounts for retail customer repairs;

82 (2) Parts sold at wholesale;

83 (3) Engine assemblies and transmission assemblies;

84 (4) Routine maintenance not covered under any retail customer warranty,  
85 such as fluids, filters, and belts not provided in the course of repairs;

86 (5) Nuts, bolts, fasteners, and similar items that do not have an individual  
87 part number;

88 (6) Tires; and

89 (7) Vehicle reconditioning.

90 8. If a franchisor, manufacturer, importer, or distributor furnishes a part  
91 or component to a franchisee, at no cost, to use in performing repairs under a  
92 recall, campaign service action, or warranty repair, the franchisor shall  
93 compensate the franchisee for the part or component in the same manner as  
94 warranty parts compensation under this section by compensating the franchisee  
95 at the average markup on the cost for the part or component as listed in the price  
96 schedule of the franchisor, manufacturer, importer, or distributor, less the cost  
97 for the part or component. **For parts used under a recall, campaign service**  
98 **action, or warranty repair for trucks with a licensed gross weight of**  
99 **eighteen thousand pounds or more, compensation shall be determined**  
100 **as set forth in subsection 2 of this section, less the cost for the part or**  
101 **component.**

102 9. A franchisor shall not require a franchisee to establish the retail rate  
103 customarily charged by the franchisee for parts, service, or labor by an unduly  
104 burdensome or time-consuming method or by requiring information that is unduly  
105 burdensome or time consuming to provide, including, but not limited to,  
106 part-by-part or transaction-by-transaction calculations. A franchisee shall not  
107 request a franchisor to approve a different labor rate or parts rate more than  
108 twice in one calendar year.

109 10. If a franchisee submits any claim under this section to a franchisor

110 that is incomplete, inaccurate, or lacking any information usually required by the  
111 franchisor, then the franchisor shall promptly notify the franchisee, and the time  
112 limit to submit the claim shall be extended for a reasonable length of time, not  
113 less than five business days following notice by the franchisor to the franchisee,  
114 for the franchisee to provide the complete, accurate, or lacking information to the  
115 franchisor.

116           11. (1) A franchisor may only audit warranty, sales, or incentive claims  
117 and charge-back to the franchisee unsubstantiated claims for a period of twelve  
118 months following payment, subject to all of the provisions of this  
119 section. Furthermore, if the franchisor has good cause to believe that a  
120 franchisee has submitted fraudulent claims, then the franchisor may only audit  
121 suspected fraudulent warranty, sales, or incentive claims and charge-back to the  
122 franchisee fraudulent claims for a period of two years following payment, subject  
123 to all provisions of this section.

124           (2) A franchisor shall not require documentation for warranty, sales, or  
125 incentive claims more than twelve months after the claim was paid.

126           (3) Prior to requiring any charge-back, reimbursement, or credit against  
127 a future transaction arising out of an audit, the franchisor shall submit written  
128 notice to the franchisee along with a copy of its audit and the detailed reason for  
129 each intended charge-back, reimbursement, or credit. A franchisee may file a  
130 complaint with the administrative hearing commission within thirty days after  
131 receipt of any such written notice challenging such action. If a complaint is filed  
132 within the thirty days, then the charge-back, reimbursement, or credit shall be  
133 stayed pending a hearing and determination of the matter under section 407.822.  
134 If the administrative hearing commission determines that any portion of the  
135 charge-back, reimbursement, or credit is improper, then that portion of the  
136 charge-back, reimbursement, or credit shall be void and not allowed.

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